

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

<i>In the Matter of</i>)	
<i>Review of the Section 251 Unbundling Obligations</i>)	CC Docket No. 01-338
<i>of Incumbent Local Exchange Carriers</i>)	
)	
<i>Implementation of the Local Competition</i>)	CC Docket No. 96-98
<i>Provisions of the Telecommunications Act of 1996</i>)	
)	
<i>Deployment of Wireless Service Offering</i>)	CC Docket No. 98-147
<i>Advanced Telecommunications Capability</i>)	
)	

**REQUEST OF THE PUBLIC UTILITY COMMISSION OF OREGON
FOR AN EXTENSION OF THE DEADLINE
FOR FILING A PETITION PURSUANT TO
47 CFR §51.319(d)(5)(i)**

Pursuant to Section 1.41 of the Commission’s rules, 47 C.F.R. §1.41 (2003), the Public Utility Commission of Oregon (“OPUC”) respectfully files this request for an extension of the 90 day deadline for filing a petition for waiver set forth in 47 C.F.R. §51.319(d)(5)(i). The OPUC requests that the Commission extend the deadline for the OPUC to submit such a petition by an additional 60 days. The reasons for the OPUC’s request are set forth herein.

BACKGROUND

In its “Report and Order and Order on Remand and Further Notice of Proposed Rulemaking” (FCC 03-36) (rel. August 21, 2003)(“TRO”), the Commission adopted rules that provide state commissions a 90 day period within which to review enumerated factors and to file a petition with the Commission for a waiver of its finding that competitive local exchange carriers (“CLECs”) are not impaired without access to incumbent local exchange carrier (“ILEC”) unbundled circuit switching to provide service to customers provided at the DS1 level

and above. 47 C.F.R. §51.319(d)(5)(i). On September 11, 2003, the OPUC received a petition (“CLEC Petition”) filed on behalf of two CLECs, Oregon Telecom, Inc. and United Communications, Inc. dba Unicom, requesting that: 1) the OPUC open a docket, 2) find that CLECs are impaired without access to ILEC unbundled switching when providing service to customers at the DS1 level and above in certain markets in Oregon, and 3) file a petition with this Commission seeking a waiver of the Commission’s national finding of no impairment. On September 23, 2003, the OPUC opened Docket UM 1110, to consider the CLEC Petition.

On October 3, 2003, the OPUC issued a Memorandum adopting the following schedule for the proceeding:

Parties have informal conference call with Staff to finalize questions to be posed to non-party CLECs	October 7 in p.m. or October 8, in a.m. 2003
Staff issues questions	October 10, 2003
Deadline to respond to survey questions	October 24, 2003
CLEC Opening Testimony	October 27, 2003
Staff distributes aggregated data from survey responses	November 14, 2003
ILECs and Petitioners file Testimony addressing CLEC testimony and survey response data	November 21, 2003
Hearing	December 2, 2003
Briefing Schedule	TBD at hearing
Commission Decision (including FCC Petition, if necessary)	December 29, 2003

This schedule was designed to ensure that the OPUC could meet the 90 day deadline established in the TRO and set forth in 47 C.F.R. §51.319(d)(5)(i).

On October 20, 2003, the OPUC issued a Commission Inquiry to select non-party CLECs under its regulatory jurisdiction, directing the non-party CLECs to gather data responsive to the

survey affixed to the Commission Inquiry as Appendix A (“CLEC Survey”). The Commission Inquiry directed the CLEC recipients of the CLEC Survey to be prepared to submit the responsive data on or before October 31, 2003. The Commission Inquiry also instructed the non-party CLECs not to submit any data until directed by Commission Staff to do so. This additional step was taken in order to allow the Commission and the parties to develop appropriate means to provide survey participants with the greatest possible protection for commercially and competitively sensitive data in accord with the Oregon Public Records Law (“PRL”) and the Oregon Unfair Trade Practices Act (“UTPA”).¹

On November 5, 2003, the Commission issued a Ruling adopting a Modified Protective Order (“MPO”) and directing non-party CLECs to file their responses to the CLEC Survey no later than November 12, 2003. The November 5th Ruling also directed the CLEC Survey respondents to designate the requested degree of protection to be accorded particular responsive data. Given the delay engendered by the need to issue the MPO, the Commission issued its Ruling on November 10, 2003 modifying the procedural schedule to permit the ILECs and Petitioners until November 28, 2003 to file testimony addressing the CLEC Survey response data.

On November 25, 2003, the OPUC issued a Ruling temporarily suspending the schedule. That Ruling states in pertinent part:

The discovery process has required the gathering of sensitive, proprietary information from non-party participants. In order to obtain this data, a new, highly-complex modified protective order had to be forged. Even so, the information provided by these non-parties is subject to substantial protection under the Unlawful Trade Practices Act and the Public Records Law and the Commission is constrained to protect the asserted rights of those non-parties to the best of its abilities. Furthermore, the data requested has not been forthcoming with either the speed or completeness that had been requested and the Commission Staff has been involved in discussions with parties and non-parties alike in order to gather, analyze, organize and protect the data.

* * * *

¹ See Oregon Revised Statutes (“ORS”) 192.410 to 192.505; *see also* ORS 646.461 to 646.475.

The Commission has an obligation to conduct this investigation to the best of its abilities, given the constraints of the processes laid down by the FCC. In order to do so, it is necessary to seek a brief extension, one that is sufficient to (1) allow the Staff to gather, analyze, organize and disseminate the data consistent with the rights of non-parties; (2) permit parties to fairly participate in the procedures previously established; (3) allow the Commission to review the record, make findings of fact and conclusions of law and; (4) if necessary, prepare and file a petition with the FCC seeking a waiver of its national findings.

In order to achieve the aforementioned goals, a revised schedule for these proceedings shall be issued simultaneously with the filing of a petition to the FCC for a brief extension of time to complete these proceedings.²

On December 9, 2003, the Commission issued a Ruling attaching a summary of the CLEC Survey results designed to mask the identity of the participating non-party CLECs and to ensure protection for confidential CLEC information. The December 9th Ruling directed any party wishing to review underlying data to submit such request no later than December 12, 2003. On December 12, 2003, the Petitioners and ILECs submitted requests to review underlying data. A telephonic prehearing conference was held on December 16, 2003, to discuss the requests for underlying data. On December 18, 2003, the parties submitted more narrowly tailored requests for underlying CLEC Survey responsive data, along with the written arguments supporting the need for the requested data.

Another telephonic prehearing conference was held on December 19, 2003, to discuss the narrowed requests for underlying CLEC Survey responsive data and scheduling matters. At the December 19th prehearing conference, OPUC Staff was instructed to make initial attempts to contact non-party CLECs regarding the disclosure of the requested underlying data from the CLEC Survey responses, and to gather and distribute the data that the non-party CLECs agreed to release to the parties subject to the MOP adopted for the proceeding. The Administrative Law Judge, OPUC Staff and the parties also discussed the likely amount of additional time that would be needed to complete the proceeding.

² OPUC November 25th Ruling, pp. 1-2.

BASIS FOR REQUESTED EXTENSION TO THE 90 DAY DEADLINE

As described above, the OPUC has endeavored to adopt and abide by a schedule that would have permitted it to complete its investigation in Docket UM 1110 in time to meet the 90-day deadline set forth in 47 C.F.R. §51.319(d)(5)(i). The need to gather information from non-party CLECs, however, has led to unavoidable delays in the schedule. Given the amount of time and effort expended to date by the OPUC and the parties to Docket UM 1110 in a good faith effort to meet the 90 day deadline set forth in the TRO, and given the importance of the subject matter to consumers of telecommunications services in the State of Oregon, the OPUC believes that a sixty day extension to the 90 day deadline is warranted.

For the foregoing reasons, the OPUC respectfully requests a sixty (60) day extension to the deadline for the OPUC to file a petition with this Commission, pursuant to 47 C.F.R. §51.319(d)(5)(i).

DATED this _____ day of December 2003.

Respectfully submitted,

HARDY MYERS
Attorney General

Michael T. Weirich, #82425
Assistant Attorney General
Of Attorneys for Oregon Public Utility
Commission